

REMARKS

I. Status of the claims

Claims 65-146 are pending in this application and were subject to restriction and/or election further to the Examiner's Requirement for Restriction and Election of Species (the "Requirement") dated May 1, 2008. No claim has been amended herein.

II. Requirement for Restriction and Election of Species

In the Requirement dated May 1, 2008, the Examiner required restriction under 35 U.S.C. § 121 and 372 between the following groups of claims:

Group I: Claims 65-136 are "drawn to a lip makeup composition."

Group II: Claims 137-142 are "drawn to a cosmetic assembly."

Group III: Claims 143 and 144 are "drawn to a cosmetic process."

Group IV: Claims 145 and 146 are "drawn to a method for making a lip makeup composition."

See Requirement, page 2.

In addition, upon election of Group I, the Examiner required election of a single monomer structure with defined R', R₁, R₂, R₃, R₄, R₅, R₆, R₇, and R₈ groups and a single additional monomer for examination. *Id.* at p. 3. In response, Applicants elected **with traverse** Group I, claims 65-136, for prosecution on the merits. In addition, Applicants further elected the monomer isobornyl (methyl)acrylate and acrylic acid for examination. See Applicants' Response dated May 29, 2008.

In the Office Communication of August 27, 2008, the Examiner asserts that "the reply filed on May 29, 2008 is not fully response" because Applicants did not provide an accurate listing of the claims readable on the elected acrylic acid species. See Office

Communication at p. 2. The Examiner asserts that because claim 107 depends from claims 77, 70, and 65, these claims also necessary read on the elected acrylic acid species. *Id.*

Applicants respectfully disagree with the Examiner's basis for the election requirement for at least the reasons of record and incorporate Applicants' Response herein, in its entirety. Nonetheless, to be fully responsive Applicants submit that the claims 65, 70, 77, and 107-111 read on the elected acrylic acid species. In addition, Applicants respectfully remind the Examiner that if the election of species requirement is maintained, Applicants expect the Examiner, if the elected species is found allowable, to continue to examine the full scope of the elected subject matter to the extent necessary to determine the patentability thereof, *i.e.*, extending the search to a "reasonable" number of the non-elected species, as is the duty according to the M.P.E.P. § 803.02 and 35 U.S.C. § 121.

III. Conclusion

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: September 17, 2008

By: Courtney B. Meeker
Courtney B. Meeker
Reg. No. 56,821
(202) 408-4000